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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Sutter)

THE PEOPLE,

Plaintiff and Respondent,

v.

DANNY LEE GIBBEL,

Defendant and Appellant.

C073219

(Super. Ct. No.
CRF120002258)

Appointed counsel for defendant Danny Lee Gibbel asked this court to review the record to determine whether there were any arguable issues on appeal. (*People v. Wende* (1979) 25 Cal.3d 436 (*Wende*).) Finding no arguable error, we will affirm the judgment.

I

Defendant was found in possession of 2.1 grams of methamphetamine and 52.7 grams of marijuana. He pleaded guilty to possession of methamphetamine. (Health & Saf. Code, § 11377, subd. (a).)

The trial court placed defendant on probation for three years. One of the conditions of probation was that defendant was prohibited from using or possessing marijuana, with or without a recommendation/prescription, without first obtaining prior written permission of the court.

Defendant obtained a medical marijuana prescription while he was on probation. He then filed a motion to modify his probation conditions to allow him to use marijuana for pain management. In support of his motion, defendant asserted that he experiences pain from prior foot and back injuries. The medical marijuana was prescribed to help him manage the pain.

Following a contested hearing, the trial court denied the motion. The trial court ruled that the probation condition related to the original crime, because defendant was found in possession of both methamphetamine and marijuana. Based on the totality of the circumstances, the trial court concluded that the probation condition is reasonably related to future criminality, and that the condition is appropriate to prevent defendant from returning to court for other crimes.

II

Because defendant moved to modify his probation condition based on a change in conditions after sentencing, his appeal is an exception to the general rule that orders denying modification of probation terms are not appealable. (See *People v. Djekich* (1991) 229 Cal.App.3d 1213, 1219 [denial of a motion to modify a probation term made after the time to appeal an order granting probation is not appealable].)

Appointed counsel filed an opening brief setting forth the facts of the case and asking this court to review the record and determine whether there are any arguable issues on appeal. (*Wende, supra*, 25 Cal.3d 436.) Defendant was advised by counsel of the right to file a supplemental brief within 30 days of the date of filing of the opening brief. More than 30 days elapsed and we received no communication from defendant.

Having undertaken an examination of the entire record, we find no arguable error that would result in a disposition more favorable to defendant.

DISPOSITION

The judgment is affirmed.

MAURO, J.

We concur:

BLEASE, Acting P. J.

ROBIE, J.